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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,163	12/31/2003	James A. Harding	249768068US	5011

25096 7590 06/07/2007  
PERKINS COIE LLP  
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EXAMINER
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SHAH, AMEE A

ART UNIT	PAPER NUMBER
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3625

MAIL DATE	DELIVERY MODE
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06/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/750,163	Applicant(s) HARDING ET AL.	
	Examiner Amea A. Shah	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 1,2 and 12-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/23/06 &amp; 3/12/07</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-32 are pending in this action.

#### ***Election/Restrictions***

Claims 1, 2 and 12-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 11, 2007. The Examiner notes that applicant elected group II without traverse, yet failed to withdraw group I and appears to request reconsideration of the restriction requirement. While the election was made without traverse, the Examiner reconsidered the requirement and stands by the original requirement; the two groups are separate inventions as subcombinations with separate utility. The requirement is still deemed proper and is therefore made FINAL.

#### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(m) and (p)(5) because (1) they do not include the following reference sign(s) mentioned in the description: 166; (2) they include the following reference character(s) not mentioned in the description: 165, 300, 322, 323, 324, 331, 332, 333, 334, 337, 338, 339, 341, 342, 343, 348, 349, 400, 460, 461, 462, 463, 464, 470, 471, 472, 473, 480, 481, 482, 483, and 484; and (3) they contain improper shading that does not aid in the understanding of the invention and will not reproduce properly (e.g. Figs. 2-4).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The

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disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract is objected to because it contains language that should be avoided, i.e. "is described."

### ***Claim Rejections - 35 U.S.C. § 101***

35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8-11 are rejected under 35 U.S.C. §101 because the claimed inventions are directed to non-statutory subject matter. Claims 8-11 are directed to "generated data signals collectively conveying a page definition data structure." Since signals are merely energy, they are nonstatutory natural phenomena. *See O'Reilly v. Morse*, 56 U.S. (15 How.) 62 at 112-14 (1853). Moreover, a signal encoded with functional descriptive material does not fall within any of the categories of patentable subject matter set forth in §101. It is not a process, because it is not a series of steps. The other three classes of §101, i.e. machine, and compositions of matter and manufactures, have traditionally required physical structure or material. Thus, a claim directed to a signal is directed to non-statutory subject matter under §101. Claims 8-11 will not be further examined with regards to prior art; however, the limitations are similar to those of claims 3-6.

***Claim Rejections - 35 U.S.C. § 112***

The following is a quotation of the second paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is rejected under 35 U.S.C. §112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: determining a most recently selected featured seller in order to use it in replying to each of the received requests. For purposes of this action only, this step will be inferred.

***Examiner Note***

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al., US 2001/0054008 A1 (hereafter referred to as "Miller") in view of English, US 2003/0055723 A1 (hereafter referred to as "English").**

Referring to claims 3, 6 and 7. Miller teaches a method in a computing system for responding to a request for information about an item (see, e.g., Abstract), comprising:

- receiving a request for information about the item (Figs. 10 and 11 and ¶¶0171 and 0176);

- among a plurality of sellers, identifying those that are offering the item for sale and whose availability level for the selected item exceeds a predetermined availability threshold (§§0171, 0172, 0174, 0176 and 0178 – note the predetermined availability threshold is one, i.e. the item being in stock);
- selecting as the featured seller of the item the identified seller that is offering the selected item at the lowest price (§0172 and 0178 – note the selection of the vendor can be based on price); and
- replying to the request for information with a web page containing both (1) information describing the item, and (2) a control that can be activated to order the item from the featured seller (Fig. 5A and §§0171, 0173, 0176 and 0179).

While Miller teaches identifying sellers based on various criteria, it does not explicitly teach the criteria including a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold. English, in the same field of endeavor and/or pertaining to the same issue, teaches a method of comparing, advertising and switching vendors whereby vendors having the item for sale are selected based on a score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold (§0062 – note the score is the aggregate rating and the predetermined threshold is the current vendor aggregate rating).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the method of Miller to include the teachings of English to allow for the identification of sellers to be based in criteria that include having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score



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threshold. One of ordinary skill in the art would have been motivated to do so based on the suggestion taught by Miller that doing so would allow for customers to have more and better access to information relating to an item in order for the customer to make better purchasing decisions (¶0007).

Referring to claim 4. Miller in view of English teaches the method of claim 3 wherein the identifying and selecting is performed before the receiving (Miller, ¶0175 and English, ¶0074 – note that by having featured vendors being selected from those that have paid a fee, the identifying and selecting occurs before a request is received).

Referring to claim 5. Miller in view of English teaches the method of claim 3 wherein the identifying and selecting is performed periodically (Miller, ¶0179 – note the period is each time a request is received), and the most recently selected featured seller is used in replying to each of a plurality of received requests (Miller, ¶¶0175 and 0188 – note the most recently selected featured seller is determined by the paying seller and the most hits).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

(1) Case et al., US 5,734,890, teaches a system and method for analyzing procurement decisions based on such factors as vendor ratings (see, e.g., Fig. 3 and columns 9-15).

(2) Clendinning et al., US 2002/0107861 A1, teaches a system and method for collecting, associating, normalizing and presenting product and vendor information including selecting and identifying vendors based on criteria such as availability, address, policies, ratings, price and reviews (see, e.g., pages 3-8).

(3) Das et al., US 2003/0023499 A1, teaches a method and system for automatically making operating purchasing decisions, such as vendor selections based on criteria including price, availability, quality, etc. (see, e.g., pages 4-7).

(4) Wight et al., US 6,917,941 B2, teaches a method and system of configuring a database to store vendor information and allowing vendor selection based on availability and any other factors (see, e.g., Figs. 6 and 7 and columns 22-27).

(5) King et al., WO 02/073356 A2, teaches a method and system for an on-line marketplace where the buyers can check price and availability of goods with a plurality of sellers (see, e.g., pages 11-19).

(6) Business Editors & E-Commerce Writers, "PriceGrabber Introduces Merchant Ratings by Shoppers," Business Wire, New York, Aug. 7, 2001, pg. 1, teaches a website, [www.pricegrabber.com](http://www.pricegrabber.com), that identifies vendors based on offering items for sale, availability and ratings.

(7) Author unknown, "BizRate.com to Acquire eBoodle.com and Offer A Powerful Online Shopping Solution," PR Newswire, New York, Aug. 3, 2000, pg. 1, teaches a website, [www.bizrate.com](http://www.bizrate.com), that identifies vendors based on offering items for sale, availability and ratings.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ameer A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AAS

June 5, 2007



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